

ORIGINAL

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I.(a) PLAINTIFFS

Wu, Minzhi

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

San Francisco County

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Law Offices of Jean D. Chen, 2107 N. First St. #400, San Jose, CA 95131. (408) 437-1788. Justin Fok, CSB# 242272,

II. BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)

1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

Original Proceeding Removed from State Court Remanded from Appellate Court Reinstated or Reopened Transferred from Another district (specify) Multidistrict Litigation Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 160 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 161 Medicare Act <input type="checkbox"/> 162 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 163 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
		<input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl.Ret. Inc. Security Act	<input type="checkbox"/> PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
		<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> LABOR <input type="checkbox"/> SOCIAL SECURITY
				<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Amer w/ disab - Empi <input type="checkbox"/> 446 Amer w/ disab - Other <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV	<input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	462

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Petition for Hearing on Naturalization Application Under 8 U.S.C. §1447(b)

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ CHECK YES only if demanded in complaint:
 UNDER F.R.C.P. 23 JURY DEMAND: YES NO

VIII. RELATED CASE(S) PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
 IF ANY "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
 (PLACE AND "X" IN ONE BOX ONLY)

 SAN FRANCISCO/OAKLAND SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD



ORIGINAL

1 Justin Fok, Esq., CA Bar: 242272
 2 Law Offices of Jean D. Chen
 3 2107 N. First Street, Suite 400
 4 San Jose, CA 95131
 5 Telephone: (408) 437-1788
 6 Facsimile: (408) 437-9788
 7 Email: jfok@jclawoffice.com

8 Attorney for Plaintiff
 9 Minzhi Wu

ADR
E-FILING

10 *Fee paid*
 11 *SI*
 12 *99*
 13 *Filed*
 14 *FEB 29 2008*
 15 *RICHARD W. WIEKING*
 16 *CLERK, U.S. DISTRICT COURT*
 17 *NORTHERN DISTRICT OF CALIFORNIA*
 18 *SAN JOSE*

19 *CRW*
 20 **UNITED STATES DISTRICT COURT**
 21 **NORTHERN DISTRICT OF CALIFORNIA**

22 **COMPLAINT**

23 **Minzhi Wu,**

24 Plaintiff,

25 v.

26 **Michael Mukasey**, United States Attorney
 27 General;

28 **Michael Chertoff**, Secretary of the
 29 Department of Homeland Security;

30 **Emilio T. Gonzalez**, Director of United States
 31 Citizenship and Immigration Services;

32 **Robert S. Mueller III**, Director of Federal
 33 Bureau of Investigation,

34 Defendants.

35 Case No.

36 **PETITION FOR HEARING ON**
 37 **NATURALIZATION APPLICATION**
 38 **UNDER 8 U.S.C. § 1447(b)**

39 **Immigration Case**

40 **PJH**

41 *1*
 42 *FJH*

43 Plaintiff Minzhi Wu, by and through her attorney of record, opens this lawsuit against the
 44 Defendants and will show this Court the following:

45 1. This action is brought for a hearing to decide Plaintiff's naturalization application due to
 46 Defendants' failure to adjudicate the application within 120 days after the first examination in
 47 violation of the Immigration and Nationality Act ("INA") § 336(b) and 8 U.S.C. § 1447(b).

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PARTIES

2. Plaintiff Minzhi Wu is a lawful permanent resident of the United States who has applied for naturalization with the United States Citizenship and Immigration Services (“USCIS”).

Plaintiff resides in San Francisco, California, which is within the jurisdiction of this court.

3. Defendant Michael Mukasey is the United States Attorney General and this action is brought against him in his official capacity. Defendant has the authority to administer the oath of allegiance and is the sole authority to naturalize persons as citizens of the United States.

Defendant Mukasey is also the head of the Department of Justice, which is the federal agency responsible for the Federal Bureau of Investigation and the National Name Check Program.

4. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security (“DHS”), and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act and its related regulations, which provide for the processing of naturalization applications.

5. Defendant Emilio T. Gonzalez is the Director of the USCIS, and this action is brought against him in his official capacity. Defendant Director is responsible for the overall administration of benefits and immigration services for the USCIS, including naturalization.

6. Defendant Robert S. Mueller, III, is Director of the Federal Bureau of Investigation (“FBI”), and this action is brought against him in his official capacity. The FBI is the law enforcement agency that conducts security clearances for U.S. government agencies, such as the Department of State and the USCIS. As will be shown, Defendant Mueller has yet to complete the security clearances on Plaintiff’s case.

JURISDICTION

7. Jurisdiction in this case is proper under the INA § 336(b) and 8 U.S.C. § 1447(b). Relief is requested pursuant to said statutes.

VENUE

8. Venue is proper in this honorable court, pursuant to 8 U.S.C. § 1447(b), in that Plaintiff may request a hearing on the matter in the District where Plaintiff resides.

INTRADISTRICT ASSIGNMENT

9. This lawsuit should be assigned to the San Francisco or Oakland Division of this court because a substantial part of the event or omission which give rise to this lawsuit occurred in San Francisco County.

CAUSE OF ACTION

10. Plaintiff is a lawful permanent resident (A 077 176 108) of the United States. Plaintiff filed an N-400, *Application for Naturalization* with the USCIS on June 23, 2004 (**EXHIBIT 1**).

11. Plaintiff completed her naturalization interview and examination at the USCIS San Francisco District Office on February 3, 2005. Plaintiff passed the English and U.S. History and Government examination, but was informed that a decision could not be made due to a pending FBI name check (**EXHIBIT 2**).

12. Plaintiff has made numerous inquiries with the USCIS and each time she has been told that her case is pending due to the FBI name check background investigation (**EXHIBIT 3**).

13. 1119 days have elapse since Plaintiff's naturalization examination.

14. Defendants have yet to make a determination on Plaintiff's N-400 application.

15. Defendants, in violation of 8 U.S.C. §1447(b), have failed to make a determination on Plaintiff's naturalization application within the 120-day period after the date of examination.

PRAYER

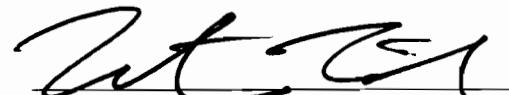
16. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff respectfully prays that the Defendants be cited to appear herein and that, upon due consideration, the Court:

- (a) assume jurisdiction over this matter;
- (b) should the Court deem it necessary, order that a hearing take place on this matter;
- (c) review this matter de novo, and approve Plaintiff's N-400, *Application for Naturalization*; or
- (d) remand the matter with specific instructions for Defendants to complete adjudication of the N-400 within 60 days of receiving the remand order;
- (e) award reasonable attorney's fees and costs under the Equal Access to Justice Act;

1 (f) grant any other relief at law and in equity as justice may require.
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5 Dated: 2/15/08
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Respectfully submitted,



Justin Fok, CA Bar: 242272
Attorney for Plaintiff

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3 **LIST OF ATTACHMENTS**
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Exhibit	Description
1	N-400 Application for Naturalization Receipt Notice
2	N-400 Naturalization Interview Results
3	Inquiry Responses from the USCIS

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Exhibit 1

THE UNITED STATES OF AMERICA

Receipt with Exception	NOTICE DATE August 19, 2004		
CASE TYPE N400 Application For Naturalization	INS # A 077 176 108		
APPLICATION NUMBER WSC*001169077	RECEIVED DATE June 23, 2004	PRIORITY DATE June 23, 2004	PAGE 1 of 1

APPLICANT NAME AND MAILING ADDRESS

MINZHI WU

SAN FRANCISCO CA 94112

PAYMENT INFORMATION:

Single Application Fee: \$390.00
 Total Amount Received: \$390.00
 Total Balance Due: \$0.00

[REDACTED]

The above application has been received by our office and is in process, but has been noted with one or more of the following exception(s):

Missing Evidence(s) - your application was missing evidence(s) that you will need to provide at the time of your naturalization interview. You will be notified under separate notice of the necessary evidence(s) that you will be required to bring to your interview. Do not submit any evidence(s) by mail.

Our records indicate your personal information is as follows:

Date of Birth: [REDACTED]

Address Where You Live:

SAN FRANCISCO CA 94112

Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.

You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 460 days of this notice.

IMPORTANT NOTICE:

All naturalization applicants who were between the ages of 14-75 at the time of filing must have their fingerprints taken at an INS Application Support Center (ASC) so they can be submitted to the Federal Bureau of Investigation for a criminal history check. If we received your application without a fingerprint card (FD-258), or your fingerprint card was received on or after December 3, 1997, you will need to go to an ASC to be fingerprinted. Do not have your fingerprints taken anywhere else. You will receive a notice that will provide you with information about when and where to go to have your fingerprints taken, and what you will need to bring with you. Please inform the office listed below immediately of any address changes.

If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.

If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.

If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.

INS Office Address:

US IMMIGRATION AND NATURALIZATION SERVICE
 CALIFORNIA SERVICE CENTER
 P.O BOX 10400
 LAGUNA NIGUEL CA 92607-

INS Customer Service Number:

(800) 375-5283

APPLICANT COPY



WSC\$001259905

Exhibit 2

Department of Homeland Security
U.S. Citizenship and Immigration Services

N-652, Naturalization Interview Results

A#: 7717618

On 2/3/05, you were interviewed by USCIS officer LET

You passed the tests of English and U.S. history and government.

You passed the tests of U.S. history and government and the English language requirement was waived.

USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.

You will be given another opportunity to be tested on your ability to _____ speak/_____ read/_____ write _____ English.

You will be given another opportunity to be tested on your knowledge of U.S. history and government.

Please follow the instructions on Form N-14.

USCIS will send you a written decision about your application.

You did not pass the second and final test of your _____ English ability/ _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.

A) _____ Congratulations! Your application has been recommended for approval. At this time it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) _____ A decision cannot yet be made about your application.

It is very important that you:

- Notify USCIS if you change your address
- Come to any scheduled interview.
- Submit all requested documents.
- Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- Go to any Oath Ceremony that you are scheduled to attend.
- Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.

Exhibit 3

U.S. Department of Homeland Security
San Francisco, CA 94111



U.S. Citizenship
and Immigration
Services

MINZHI WU

[REDACTED]
SAN FRANCISCO CA 94112

File No. A77 176 108

App Id: WSC*001169077

Date: 06/17/2005 cw

Officer:

Re: Pending N-400 for Background Check

This is in response to your recent inquiry. A review of your application shows that your Form N-400, Application for Naturalization, is still pending for the completion of all necessary background checks. Unfortunately a decision on your application cannot be made until all required security checks have been completed. All cases pending for security checks are regularly reviewed for any new cases that have cleared. We apologize for the delay and request your cooperation and patience in waiting for these important checks to be completed.

Thank you for your cooperation and patience.

U.S. Citizenship and Immigration Services
630 Sansome Street
San Francisco CA 94111

Sincerely,

A handwritten signature in black ink that reads "David N. Still".

David N. Still

District Director



Name: Cathy Minzhi Wu

Appointment Question about case

Type:

Confirmation SFR-06-54005

No.:

Appointment January 3, 2007

Date:

Feb. 15

Authentication 174f3

Code:

Appointment 8:00

Time: AM

Location: 444 WASHINGTON STREET, San Francisco, CA 94111; LOBBY

**This is your Confirmation
Number:**



*** S F R - 8 6 - 5 4 8 8 5 ***

**If you wish to cancel this appointment, you will need the
following Personal Identification Number:**

11454

**Please be on time. Failure to show up on time will result in the cancellation of
your appointment. You will then need to reschedule your appointment. You will
not be admitted more than 15 minutes before your scheduled appointment time.**

- You must appear in person and bring photo identification along with this appointment letter.**
- Acceptable forms of identification are any of the following: Government issued identification, passport, valid driver's license, I-94, Work Authorization Card, or Permanent Resident Card. (Green Card)**
- In order to serve you more efficiently, we require you to bring all applicable immigration forms, letters, receipts, translations and originals of supporting documents.**
- NOTE: Cell phones that have camera features are not permitted in the building. Food and drinks are not permitted in the waiting room. In order to facilitate easy and swift entrance, you are advised to keep handbags and metal objects to a minimum by leave such items at home or with persons who will remain outside the building.**

U.S. Department of Homeland Security
630 Sansome Street
San Francisco, CA 94111



U.S. Citizenship
And Immigration
Services

Dear Mr. MINZHI WU

A77 176 108

May 24, 2007

1. Service records indicate that you filed an application for citizenship on _____. After filing your application, you should have received a notice for fingerprinting within four months. After fingerprinting, you should be scheduled for an interview within 12 months.
2. Service records indicate that you missed your scheduled citizenship appointment. You should be rescheduled for an interview within 3 months.
3. You will be scheduled for a reexamination within three months. Our records show that you did not pass the examination at your first interview.
4. Service records indicate that you missed your preliminary interview on _____. Per Service regulations your application was Administratively Closed on _____. From the date of closing you had one year to reopen your case. The Service did not receive any new information within the one year. You will need to re-file a new N-400.
5. Your file has been ordered from the National Record Center. Please allow three months for receipt and review of the file.
6. Service records show that your case was denied on _____. Records show that the denial was sent to the address on record. You will need to re-file for citizenship once eligibility is established. If you need a duplicate copy of the denial letter, you may request one via the Freedom of Information Act.
7. The Service is unable to locate any record of your N-400 application. Please submit to the address below the following documents: a copy of your N-400, a copy of your alien registration card, proof of payment and a copy of any previous I.N.S. correspondence you have received regarding the application.
8. Service records show that your fingerprint check has expired. Before the Service can make a final decision on your case, a current set of fingerprints must be on file. Attached is Form N14 for fingerprinting. Please follow the instructions for fingerprinting.
9. We were unable to process your inquiry because you did not provide your alien registration number or the alien registration number you provided was incorrect. Please note your alien registration number: A _____ and make a copy of your alien registration card. Return this notice and all documents to the address below.
10. Your N-400 application is still pending. The case is being handled by another unit. They will contact you directly with more information.

MINZHI WU
111 WESTWOOD DRIVE
SAN FRANCISCO, CA. 94112

For future inquiries, address changes or to request forms, you may call the CIS National Customer Service Center at 1-800-375-5283. You can also visit the CIS Information Unit at 444 Washington Street in San Francisco or visit the CIS website at www.uscis.gov.



Name: Minzhi Wu

Appointment Type: Question about case

Confirmation No.: SFR-08-2680

**Authentication 172da
Code:**

Appointment Date: January 31, 2008

Appointment Time: 7:45 AM

**Location: 444 WASHINGTON STREET, San Francisco, CA 94111;
LOBBY**

**This is your Confirmation
Number:**



**If you wish to cancel this appointment, you will need the
following Personal Identification Number:**

60375

**Please be on time. Failure to show up on time will result in the cancellation of
your appointment. You will then need to reschedule your appointment. You will
not be admitted more than 15 minutes before your scheduled appointment time.**

- You must appear in person and bring photo identification along with this appointment letter.
- Acceptable forms of identification are any of the following: Government issued identification, passport, valid driver's license, I-94, Work Authorization Card, or Permanent Resident Card. (Green Card)
- In order that we may serve you more efficiently, we recommend that you bring all applicable immigration forms, letters, receipts and supporting documents. If translations are used, they should be certified. Please bring the original documents as well.
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